

This letter discusses a Motor Fuel Use Tax licensing penalty. See 35 ILCS 505/13a.6. (This is a GIL.)

November 18, 2003

Dear Xxxxx:

This letter is in response to your letter dated September 9, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

The following matter is being referred to your office for review. It is my belief that my client, is not subject to the Motor Fuel Tax Law. The facts are as follows:

PERSON owns a truck that doubles as a horse trailer and mobile home. PERSON enjoys traveling to various horse shows and uses the aforementioned vehicle for that recreational purpose. In November 2002 PERSON was stopped by an Illinois State Trooper. PERSON was cited for not having proper IFTA registration. He paid the fine and returned to STATE.

PERSON contacted FIRM, Attorneys at Law, and requested that they review these events. The root of the problem was determined to be that PERSON's truck was improperly registered. In short, his vehicle was licensed as a Farm vehicle. PERSON does not own or operate a farm, hence his vehicle was registered improperly. He does own horses but they are not kept for farming purposes, they are owned for recreational purposes only. Accordingly, PERSON re-registered his vehicle with a Truck license plate and Mobile Home license plate. It should be noted that when PERSON and his family travel to horse shows that the activities only involve riding, competitions and showings. **The vehicle is not used in any commercial or business endeavor.** PERSON does not buy and/or

sell horses at these shows, nor does he earn compensation through the events.

This matter was appealed to the Illinois Department Board of Appeals in Chicago and the appeal was subsequently denied. NAME of the Illinois Board of Appeals stated in his letter that the \$1,000.00 penalty was correctly assessed because "Commercial Motor Vehicle' means any truck with more than two axles.' NAME fails to cite the balance of 35 ILCS 505 which goes on to provide that 'Commercial Motor Vehicles' does not include 'recreational vehicles'. In other jurisdictions, most notably STATE--PERSON's home state, recreational vehicles are vehicles 'used exclusively for personal pleasure by an individual. In order to qualify as a recreational vehicle, the vehicle shall not be used in connection with any business endeavor.'

As the facts set forth in the attached affidavit demonstrate, my client is not engaged in business or commercial activity with his vehicle. He admits that at the time of the original infraction that his vehicle was improperly registered in STATE. Further, he does not dispute that farm vehicles (as his vehicle was improperly registered) are subject to the Motor Fuel Use Tax. The only reason the vehicle was registered with farm plates is because PERSON received erroneous information from the STATE Department of Transportation. It should be noted that PERSON has never worked on a farm, owned a farm, or participated in any farm business.

My client paid the original fine as levied by the State Trooper. That fine is directly related to the fact that he had the wrong plates on his vehicle. The \$1,000.00 penalty currently being disputed is disproportionate to his error of having the wrong license plates on his vehicle. It is clear that he does not have, nor has he ever, had a commercial vehicle within the meaning of section 305 ILCS 505.

In short, the conclusion by the Board of Appeals is **clearly in error** given that the taxpayer in this situation is an individual that is not affiliated in any manner with a business or commercial endeavor. We would ask that:

- a. The tax assessment be abated.
- b. The Department issue a ruling holding that the vehicle in this matter is not a commercial vehicle due to its recreational nature and use.
- c. That the vehicle is not subject to enrollment in the Motor Fuel Use Tax program.

Should have any questions, please feel free to contact our office at your convenience.

Your letter has been forwarded to the Legal Services Office. The Legal Services Office does not make the kind of determinations requested in your letter. We hope the following information will be helpful.

From reviewing the Department's records, it appears that a Notice of Tax Liability for Motor Fuel Use Tax was issued to your client in April. From that time, your client had 30 days in which to file a protest and request a hearing. No protest was received in the Department. Your letter indicates, however, that your client has been to the Board of Appeals. Apparently the Board of Appeals determined that the motor vehicle in question was a commercial motor vehicle and the penalty was owed. The only option that we are aware of for your client is to contact the Chief Administrative Law Judge in writing and request a discretionary hearing. Please be advised that in

cases of failure to timely protest, the reasons for requesting the hearing would have to be very compelling and cogent for such a request to be approved. See 86 Ill. Adm. Code 200.175.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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